United Nations CERD/C/ITA/CO/19-20

# International Convention on the Elimination of All Forms of Racial Discrimination

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**Committee on the Elimination of Racial Discrimination**

## Concluding observations on the combined nineteenth and twentieth periodic reports of Italy*

1. The Committee considered the combined nineteenth and twentieth periodic reports of Italy (CERD/C/ITA/19-20), submitted in one document, at its 2504th and 2505th meetings (see CERD/C/SR.2504 and 2505), held on 1 and 2 December 2016. At its 2513th meeting, held on 8 December 2016, it adopted the present concluding observations.

### A. Introduction

2. The Committee welcomes the timely submission of the combined nineteenth and twentieth periodic reports of Italy and the information presented therein. The Committee appreciates the written replies to the list of themes, the open and constructive dialogue that it had with the delegation of the State party and the supplementary information provided to it in writing.

### B. Positive aspects

3. The Committee commends the State party for its efforts in search and rescue operations at sea of migrants and asylum seekers and for the humanitarian assistance and international protection extended to such persons. It is aware of the major challenges faced by the State party, including the fact that, as indicated by the head of the delegation, despite the State party's efforts, 355 persons were retrieved from the sea deceased in 2016.

4. The Committee also welcomes the adoption by the State party of the following legislative and policy measures:

(a) Law No. 67/2014 in April 2014 to abolish the criminal offence of irregular entry or stay in the territory of the State party and to establish administrative sanctions instead, as recommended by the Committee in its previous concluding observations (see CERD/C/ITA/CO/16-18, para. 22);

(b) Legislative Decree No. 18/2014 implementing European Union directive 2011/95/EU setting out the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for

* Adopted by the Committee at its ninety-first session (21 November to 9 December 2016).

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refugees or persons eligible for subsidiary protection and for the protection afforded to refugees, on 21 February 2014;

(c) National plan of action against racism, xenophobia and related intolerance, on 7 August 2015.

5. The Committee also welcomes the ratification of, or accession to, a number of international instruments by the State party, including:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 3 April 2013;

(b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 20 February 2015;

(c) The Convention on the Reduction of Statelessness, on 1 December 2015;

(d) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 4 February 2016.

## C. Concerns and recommendations

### Anti-discrimination legislation

6. The Committee takes note of the general equality provision set out in article 3 of the constitution and the assurance provided by the State party delegation that the provisions of article 1 of the Convention have been transposed in its entirety into its domestic legislation. However, the Committee remains concerned at the lack of clarity regarding the specific legislation and the provisions which prohibit racial discrimination, in accordance with article 1 of the Convention, in particular with regard to the prohibition of discrimination on the basis of colour and national or ethnic origin, and regardless of whether discrimination was a consequence of "purpose or effect" (art. 1).

7. **The Committee recommends that the State party adopt the necessary measures to ensure that its domestic anti-discrimination legislation prohibits all forms of discrimination in accordance with article 1 of the Convention, including on the basis of colour and national or ethnic origin, as well as discrimination caused by intent or negative impact. It recalls that legislative guarantees against racial discrimination should apply to non-citizens, regardless of their immigration status, as underlined in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. The Committee requests that the State party provide, in its next periodic report, further clarification on the legislative framework and the exact wording of the legal provisions which prohibit all forms of racial discrimination in accordance with article 1 of the Convention.**

### Disaggregated statistical data

8. While noting the recent efforts made by the State party to improve its data collection of criminal offences committed on the basis of racist motives, the Committee reiterates its previous concern regarding the lack of detailed data on the racial and ethnic composition of the State party. Such data is the essential starting point for the subsequent disaggregation of more detailed socioeconomic indicators by social group that will reveal the extent to which there is a differential enjoyment of the rights under the Convention by individuals protected under article 1. The Committee stresses that such disaggregated statistical data is essential in determining an empirical basis for identifying particular groups that face discrimination on the basis of race, colour, descent, or national or ethnic origin, for adopting appropriate

measures, including special measures, to correct situations of inequality and for evaluating the impact of the measures adopted (arts. 1, 2 and 5).

9. **The Committee recommends that the State party establish a mechanism not only to collect disaggregated data on criminal offences committed on the basis of racist motives, but also on violations of article 1 of the Convention that are covered in the legislation of the State party separate from and additional to the penal code, that is other provisions of civil and administrative law that guarantee the equal enjoyment of rights regardless of race, colour, descent, or national or ethnic origin. It also reiterates its previous recommendation to collect disaggregated statistical data on the ethnic composition of its population, taking into account the Committee's revised reporting guidelines (see CERD/C/2007/1, paras. 10 and 12) and general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention.**

**National human rights institution**

10. The Committee regrets the lack of progress achieved in establishing a national human rights institution, despite its previous recommendation in its concluding observations of 2012 and the commitment expressed by the State party to do so (art. 2).

11. **Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party establish, without further delay and with the effective participation of civil society actors, a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

**National Office against Racial Discrimination**

12. While noting the important work that the National Office against Racial Discrimination (UNAR) continues to undertake to promote equality and combat racial discrimination in the State party, the Committee remains concerned about its lack of independence (art. 2).

13. **The Committee recommends that the State party ensure the independence of the National Office against Racial Discrimination (UNAR) in both law and in fact, and that it has sufficient human and financial resources to carry out its mandate effectively. It also emphasizes that any plan to merge the Office into an independent authority with a broader remit should guarantee the independence and effectiveness of its mandate to combat racial discrimination.**

**Racist hate speech**

14. While noting the initiation of judicial proceedings against some local politicians for the dissemination of ideas based on racial superiority or hatred, the Committee is concerned that the provisions in the constitution providing immunity for members of parliament for the opinions that they express in the exercise of their functions may prevent them from also being held accountable. It expresses particular concern at the prevalence of racist discourse, stigmatization and negative stereotypes in political debates, which are directed against migrants, Muslims, people of African descent and Roma, Sinti and Camminanti communities and which are also perpetrated by the media. The Committee expresses further concern regarding (a) the instances of racist hate speech on the Internet, including the increasing number of Facebook groups that promote and incite hatred against non-citizens; and (b) the lack of data regarding the prosecution of the individuals responsible and the remedies provided to victims (arts. 2 and 4).

15. **Taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

(a) **Ensure that all individuals, including politicians at all levels, are held accountable and are sanctioned for the dissemination of ideas based on racial superiority or hatred and other violations of article 4 of the Convention, including by lifting parliamentary immunity for racist hate speech in conformity with general recommendation No. 7 (1985) relating to the implementation of article 4;**

(b) **Ensure that victims of racist hate speech are provided with effective remedies;**

(c) **Establish a coherent data collection mechanism to record systematically incidents of racist hate speech, the application of relevant legislation, penalties imposed on the perpetrators and remedies provided to the victims;**

(d) **Condemn unequivocally at the highest political level the dissemination of hate speech and hateful ideas and engage in promoting a culture of tolerance and respect;**

(e) **Ensure that the prohibition of racist hate speech extends to the Internet, and ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;**

(f) **Encourage public and private media to adopt and abide by codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards, including avoidance of stereotyping and unnecessary referral to race, religion and other group characteristics in a manner that may promote intolerance;**

(g) **Ensure the prohibition of, promotion or incitement to, racial discrimination by public authorities or public institutions at both national and local levels in accordance with article 4 (c) of the Convention;**

(h) **Use the platforms of public office to encourage the means of eliminating barriers between races and to discourage policies that tend to strengthen racial division, in accordance with article 2 (1) (e) of the Convention.**

**Racist hate crimes**

16. The Committee notes the measures taken by the State party to combat racist hate crimes, including the establishment of the Observatory for Security against Acts of Discrimination within the Ministry of the Interior in 2010 to encourage the reporting and facilitate the recording of hate crimes. However, the Committee remains concerned at (a) recent reports of racially-motivated violence and crimes and the lack of an effective response to such acts; (b) the provision regarding aggravating circumstances in Law No. 205/1993 (Mancino Law) which appears to weaken the law by recognizing a "racist motive" as an aggravating circumstance only when it is the sole motivation, but not when there are mixed motives; and (c) the lack of data collection of incidents of racist hate crimes in a systematic and coherent manner, including information on decisions adopted to apply the Mancino Law, penalties imposed on perpetrators, and remedies provided to victims (arts. 2, 4 and 6).

17. **Taking into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:**

(a) **Investigate all reported acts of racist hate crimes, prosecute and punish those found responsible with sanctions commensurate with the gravity of the offence and provide effective remedies to victims;**

(b) **Systematically collect disaggregated data on hate incidents and crimes, particularly with regard to actions pursuant to the administration of justice, including prosecutions and reasons for declining to prosecute when the person responsible has been identified;**

(c) **Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system;**

(d) **Strengthen the law on aggravating circumstances to apply it to ordinary crimes when racial hatred is one of several and/or mixed motivations.**

**Mixed migratory flows: migrants, asylum seekers and refugees**

18. The Committee is aware of the efforts of the State party to implement the specific rights of persons fleeing armed conflict or persecution who arrive on its shores, ensuring respect for the rights of migrants arriving in the same migratory flows as refugees and asylum seekers, which should also be stepped up through strengthened international cooperation, in particular by the European Union and countries of origin, transit and reception.

19. The Committee welcomes the adoption of Law No. 67/2014 in April 2014 to abolish the criminal offence of irregular entry or stay in the territory of the State party, although it remains concerned that irregular migrants re-entering the country following an expulsion will continue to face criminal sanctions. The Committee also expresses concern at the "hotspot" approach adopted by the State party, pursuant to the recommendation of the European Commission in May 2015, which has been designed to provide locations in which irregularly arriving migrants and asylum seekers can quickly be identified and transferred for the purposes of the processing of asylum applications, relocation in another European Union member State, or return to their countries of origin. Some of the Committee's concerns regarding the hotspot approach include:

(a) The lack of a legal basis for the establishment of the hotspots and the de facto detention of migrants and asylum seekers beyond the legally permissible 48-hour period;

(b) The insufficient number of reception centres and the substandard conditions therein;

(c) The inadequate protection of unaccompanied and separated minors, whose guardianship system is not sufficiently individualized and places too much responsibility on some municipalities;

(d) The use of violence to force individuals to provide their fingerprints;

(e) The lack of clear guidelines, procedures and division of responsibilities with regard to the identification of and assistance to persons in situations of vulnerability, who require specific attention and protection measures, including victims of torture, trafficking and sexual and gender-based violence;

(f) The lack of effective preventive safeguards against refoulement, including a disproportionate reliance on nationality in the hotspot approach, which increases the likelihood of violations of the prohibition of collective expulsions and the principle of non-refoulement (arts. 1, 2, 5 and 6).

20. **The Committee recommends that the State party:**

(a) **Consider introducing a presumption against immigration detention in law and ensure that immigration detention is only applied as a measure of last resort, after it has been determined, on a case by case basis, to be strictly necessary, proportionate, lawful and non-arbitrary, and is imposed for the shortest period of time;**

(b) **Decriminalize all instances of irregular re-entry or stay;**

(c) **Ensure that all facilities where migrants and asylum seekers are deprived of their liberty have a basis in law and that they are not held beyond the legally permitted duration of 48 hours;**

(d) **Ensure that there are sufficient reception centres with adequate conditions and that the management and the staffing of the hotspots reflect the human rights concerns and needs of migrants and asylum seekers;**

(e) **Put in place gender-appropriate, culturally sensitive and age-sensitive individual screening and assessment procedures to ensure the rapid and appropriate identification of international protection needs or situations of vulnerability;**

(f) **Ensure that the physical integrity of migrants and asylum seekers is safeguarded, that they receive the assistance of lawyers and independent monitors and that law enforcement officers are guided by the principle of the minimum use of force when fingerprinting them;**

(g) **Strictly observe the principle of non-refoulement and amend expulsion procedures to ensure that no individual is expelled without an individualized assessment that the person will not be at risk of serious human rights violations upon return;**

(h) **Fully implement the recommendations contained in the report by the Special Rapporteur on the human rights of migrants following his mission to the State party (A/HRC/29/36/Add.2).**

**Roma, Sinti and Camminanti communities**

21. While noting the measures adopted by the State party, including the adoption of the national strategy for the inclusion of Roma, Sinti and Camminanti communities for the period 2012-2020, the Committee reiterates its deep concern at the persistent and entrenched discrimination that these communities continue to experience. The Committee is particularly concerned about:

(a) The continued practice of forced evictions of Roma, Sinti and Camminanti communities throughout the State party, which has a particularly negative impact on children remaining in school;

(b) The fact that Roma, Sinti and Camminanti communities continue to live in segregated camps or housing areas with substandard accommodation, many unsuitable for human habitation, and in remote areas distanced from basic services, including health care and schools;

(c) The construction by municipal authorities of new segregated Roma-only camps;

(d) The introduction by local authorities of criteria to assess social housing and other forms of housing benefit that discriminate against Roma, Sinti and Camminanti;

(e) The absence of legal remedies provided to Roma, Sinti and Camminanti whose rights were violated by the implementation of the nomad emergency decree formerly in operation from May 2008 to November 2011;

(f) The number of stateless persons among Roma, Sinti and Camminanti communities and the lack of information provided by the State party on the practical measures taken to remedy the situation (arts. 1, 2, 3, 5 and 6).

22. **Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:**

(a) **Halt any plans to carry out further evictions of Roma, Sinti and Camminanti communities or to establish new segregated camps or segregated housing areas that separate them from the wider society;**

(b) **End the use of segregated camps and ensure the provision of adequate and culturally appropriate accommodation to Roma, Sinti and Camminanti as a matter of priority;**

(c) **Review and amend national, regional and municipal housing legislation, policies and practices to ensure that they do not discriminate against Roma, Sinti and Camminanti in the enjoyment of their rights, in particular their access to social housing and other forms of housing benefit;**

(d) **Prioritize efforts to ensure that Roma, Sinti and Camminanti children are able to access quality education that is culturally and linguistically appropriate at schools that are geographically accessible and where they suffer no form of segregated schooling or negative treatment by staff or students;**

(e) **Ensure that the national strategy for the inclusion of Roma, Sinti and Camminanti communities for the period 2012-2020 leads to concrete and tangible improvement of the enjoyment of their rights by Roma, Sinti and Camminanti, including by eliminating statelessness, and ensuring that (a) Roma, Sinti and Camminanti communities are able to participate effectively in the development and implementation of the strategy; (b) the impact of the strategy is monitored and evaluated regularly, based on comprehensive data; (c) there are adequate human and financial resources to implement the strategy effectively;**

(f) **Provide effective remedies and reparations to Roma, Sinti and Camminanti who have suffered human rights violations, including as a result of the implementation of the nomad emergency decree, taking into account judgment No. 6050 of the Council of State of 16 November 2011.**

### Situation of migrant workers

23. The Committee notes the measures adopted by the State party to combat labour exploitation, including the adoption of the national plan of action against trafficking and serious exploitation for the period 2016-2018 and of a new law approved by the Chamber of Deputies on 18 October 2016 to combat undeclared work and labour exploitation in agriculture (known as "law on *caporalato*"), and appreciates the information provided on violations of articles 600 to 603 bis of the penal code on the reduction in slavery, trafficking in human beings, purchase or alienation of slaves and illicit intermediation and labour exploitation. However, the Committee is concerned that employers continue to exploit migrants physically and financially, without fear of sanctions, and that migrants lack access to effective and appropriate legal protection against abuse and exploitation. It also reiterates its previous concern that migrants continue to face difficulties in accessing some social services, particularly those provided by local authorities (arts. 1, 5 and 6).

24. **The Committee recommends that the State party:**

(a) **Ensure the effective implementation in practice of the new law approved by the Chamber of Deputies on 18 October 2016 to combat undeclared work and labour exploitation in agriculture (known as "law on *caporalato*");**

(b) **Adopt further measures to strengthen the capacity of the Labour Inspectorate to implement legislation to combat labour exploitation and racial discrimination and ensure that employers who abuse the rights of migrants are sanctioned;**

(c) **Ensure that all migrants have access to justice and effective remedies, and that they can lodge complaints of violations of their rights without fear of arrest, detention or deportation;**

(d) **Provide access to basic services to all migrants, regardless of their immigration status, in accordance with international human rights standards;**

(e) **Provide further information, in its next periodic report, on the implementation of the law on *caporalato* and other relevant legislation, as well as the work undertaken by the Labour Inspectorate on racial discrimination and labour exploitation, including the number of visits undertaken, the number and nature of sanctions imposed, and other measures taken in different regions and sectors.**

**People of African descent**

25. The Committee expresses concern that people of African descent from all walks of life, including politicians, football players and children in schools, who may be citizens or non-citizens, continue to face discrimination in many forms, such as violence, hate speech, harassment and stigmatization. It takes note of the intention expressed by the State party delegation to organize an event in 2017 to raise awareness among the general public of the situation of people of African descent in the State party, but remains concerned at the lack of concrete and comprehensive measures taken to eliminate all forms of discrimination against these communities (arts. 1, 2 and 5).

26. **Bearing in mind its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party:**

(a) **Investigate all acts of racial discrimination against persons of African descent, both citizens and non-citizens, prosecute or hold legally responsible those who committed the violations and provide effective remedies to victims;**

(b) **Collect and publish data on the incidents of discrimination against persons of African descent in the State party, the number of investigations, prosecutions and convictions of those responsible and the outcomes of civil and administrative legal actions;**

(c) **Adopt comprehensive and concrete measures to combat discrimination against people of African descent, including in the context of the national plan of action against racism, xenophobia and related intolerance;**

(d) **Ensure that there are teachers of African descent in schools and that all teachers and others working in educational institutions receive adequate training on the principles of equality and non-discrimination and on ways to deal with instances of racial discrimination in schools;**

(e) **Ensure that the school curriculum includes the history of the State party's colonial past in order to convey the consequences and the continued impact of racially discriminatory policies;**

(f) **Fully implement the recommendations made by the Working Group of Experts on People of African Descent following its mission to Italy in June 2015 (A/HRC/33/61/Add.1).**

**Criminal justice system**

27. The Committee is concerned at the information provided by the State party delegation that non-citizens comprise almost half of the total prison population. Furthermore, while noting the assurance provided by the State party delegation on the non-existence of racial profiling, the Committee expresses concern at reports of such practices (arts. 1 and 5).

28. **The Committee recommends that the State party, in its next periodic report, provide further information on the representation of non-citizens in the criminal justice system, disaggregated by the grounds outlined in article 1 of the Convention, namely race, colour, descent or national or ethnic origin. It requests that the State party provide further clarification on the reasons behind the disproportionate representation of non-citizens in its prisons and the measures adopted to rectify this situation. It also recommends that the State party ensure that the practice of racial profiling is prohibited and fully respected by all law enforcement agencies.**

## D. Other recommendations

**Ratification of other instruments**

29. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

**Follow-up to the Durban Declaration and Programme of Action**

30. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

**International Decade for People of African Descent**

31. **In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State**

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**party include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34.**

**Consultations with civil society**

32. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

**Follow-up to the present concluding observations**

33. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 17 (a) (racist hate crimes), 22 (a) and (b) (Roma, Sinti and Camminanti communities) and 20 (b) and (g) (mixed migratory flows: migrants, asylum seekers and refugees) above.**

**Paragraphs of particular importance**

34. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 15 (racist hate speech), 20 (mixed migratory flows: migrants, asylum seekers and refugees), and 24 (situation of migrant workers) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

**Dissemination of information**

35. **The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.**

**Preparation of the next report**

36. **The Committee recommends that the State party submit its twenty-first periodic report by 4 February 2019, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**